Supreme Court, U. S.
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No. 75-1566

In the

Supreme Court of the United States

OCTOBER TERM, 1975

LESLIE C. CASE,

Petitioner,

vs.

CPC INTERNATIONAL INC. and
COMMISSIONER OF PATENTS AND TRADEMARKS,

Respondents.

On Motion For Leave To File Petition For
Extraordinary Writ And
Petition For Extraordinary Writ

BRIEF FOR RESPONDENT CPC INTERNATIONAL INC. IN OPPOSITION

KEITH V. ROCKEY
McDOUGALL, HERSH & SCOTT
135 South LaSalle Street
Chicago, Illinois 60603

Attorney for Respondent
CPC International Inc.

Of Counsel:

GEORGE L. GREENFIELD
Wolf, Greenfield & Sacks
185 Devonshire Street
Boston, Massachusetts 02110

ALBERT P. HALLUIN
International Plaza
Englewood Cliffs, New Jersey 07632

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REFERENCES TO THE RECORD BELOW

The Appendix to the Petition contains nothing but the Memorandum Opinion of the Court of Appeals below, and is unnumbered.

Believing that this Court should have convenient access to the key parts of the record below, respondent CPC International Inc. has annexed to this brief its own appendix, wherein such portions of the record are set forth. Respondent CPC's appendix is page numbered 1a, 2a, etc.

IN THE
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LESLIE C. CASE,

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vs.

CPC INTERNATIONAL INC. and
COMMISSIONER OF PATENTS AND TRADEMARKS,

Respondents.

On Motion For Leave To File Petition For
Extraordinary Writ And
Petition For Extraordinary Writ

BRIEF FOR RESPONDENT CPC INTERNATIONAL INC. IN OPPOSITION

The motion for leave to file a petition for an extraordinary writ and the petition therefor presents no question warranting this Court's attention.

No question of interest to the public is involved; indeed, the case is a routine one in which petitioner has never, even up to the filing of his motion and petition, exhausted his administrative remedies.

Opinion Below

The memorandum opinion herein of the United States Court of Appeals for the First Circuit is unreported. It is reproduced as the sole appendix in the motion and petition.

Jurisdiction

This Court has jurisdiction to consider the motion and petition by virtue of Title 28, United States Code §1651(a).

Question Presented

In the motion and petition, it is said (pages 4 and 5) that this case presents a question of whether this Court's decision in *Precision Instrument Manufacturing Co.* v. *Automotive Maintenance Machinery Co.*, 324 U.S. 806 (1945) is good law and binding on the United States Patent and Trademark Office as well as respondent CPC International Inc.

That simply is not a question raised below. None of the Courts below, nor any of the parties, has ever suggested that *Precision Instrument* is not good law. All that has ever been said is that petitioner has failed to exhaust his administrative remedies, and thus the District Court below had no jurisdiction over petitioner's claim.

Those rulings are absolutely correct.

Statement Of The Case

This case arises from an interference proceeding presently pending in the United States Patent and Trademark Office. The interference proceeding has gone through a stormy history, both in the Patent and Trademark Office as well as the Courts below, largely due to petitioner's unfamiliarity with patent interference practice.

To fully demonstrate why petitioner is entitled to no relief in this Court, we hereafter tender, for the Court's convenience, a brief history of the interference proceeding as well as the related litigation in the Courts below.

A. The Proceedings In The Patent Office — Interference No. 98,302

Petitioner is the inventor and owner of U. S. Patent No. 3,510,471, issued on an application filed in the Patent and Trademark Office on March 9, 1967. Respondent CPC International Inc. (hereafter referred to as CPC) is the owner, by assignment from Dr. Hyman M. Molotsky, of a pending patent application, Serial No. 105,684, accorded an effective filing date of January 3, 1967.

The interference proceeding between petitioner's patent and respondent CPC's pending patent application was declared on April 26, 1973 by the Commissioner of Patents and Trademarks to determine priority of invention as between the two, pursuant to Title 35, United States Code §135. The subject matter of the interference, described in both petitioner's patent and respondent CPC's application, is a complex chemical composition of a polyether polyol produced from a polysaccharide such as starch. The same invention having been described by both petitioner and CPC's inventor, the interference was necessary to determine who, as between them, is the first inventor.

In accordance with the usual practice, petitioner filed in the interference proceeding a number of motions under 37 CFR §1.231, asking that the interference be dissolved on the theory that it should never have been declared

in the first place. He also sought to amend the definition of the subject matter in issue and to shift the burden of proof.*

The Patent and Trademark Office ruled against petitioner as to all of his motions. Three of the motions:

(1) to dissolve the interference on the ground that there was no interference in fact (*i.e.*, that the parties disclosed different inventions);

(2) to dissolve on the ground that Molotsky cannot support the claim or count, the priority of which was contested; and,

(3) to shift the burden of proof

were denied by the Primary Examiner in an interlocutory ruling, subject to review by the Board of Patent Interferences at final hearing pursuant to 37 CFR §1.258. (If petitioner were to prevail on any one of those motions at final hearing, now set for June 10, 1976, he will either obtain dissolution of the interference, or he will win on the question of priority.)

After the motion period, the interference was advanced to the trial stage.

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* Under 37 CFR §1.257, parties to an interference are presumed to have made the invention in the chronological order of the filing dates of their respective applications. Dr. Molotsky's application having been accorded a filing date earlier than that of petitioner, petitioner bears the burden of proving prior invention over Molotsky. (37 CFR §1.257 is one of the regulations promulgated by the Commissioner, by virtue of Title 35, United States Code §6 to govern the conduct of interference proceedings. The most pertinent regulations of the Commissioner relating to interferences are 37 CFR §§1.201-1.287.)

B. An Interlude In The Patent Office Proceeding — The District Of Columbia Civil Action

As the interference proceeding in the Patent Office approached the trial stage, petitioner filed a civil action in the United States District Court for the District of Columbia, naming as defendants, CPC, its inventor, Dr. Molotsky and the Commissioner of Patents and Trademarks (Civil Action No. 75-0292).*

The complaint alleged a number of errors said by petitioner to have been committed by the Commissioner in the conduct of the interference proceeding. In paragraph 9D thereof, petitioner alleged:

> "The evidence on the record indicates that Defendant-Applicant may not be the sole inventor of the alleged invention of the phantom counts of the alleged interference." * * * (5a)

The District of Columbia civil action was short-lived for Judge Waddy dismissed the complaint from the bench for want of jurisdiction (8a). Here is what he said:

> "This Court is satisfied that the law requires, for the jurisdiction of this Court to attach, that there be final action by the Patent Office, or an exceptional case that would remove it from the general law and

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* That complaint is reproduced in the appendix hereto, 1a-7a.

** It was petitioner's position, both in the Patent and Trademark Office and before the District Court in the District of Columbia, that Dr. Molotsky was not the sole inventor of the subject matter of the Molotsky patent, solely because one Ed Karraker signed an "idea book" entry on the line reserved for the "inventor". Mr. Karraker is not designated as a co-inventor of the Molotsky application; he happened to be Dr. Molotsky's laboratory assistant, working under Molotsky's direction (17a).

that there is no final action by the Patent Office in this case and the case is still being processed and is being timely processed in that there is no claim of delay . . . the Court finds that there is no exceptional case here which would remove this case from the general rule because it is not convinced, clearly convinced, that a review of final action would be completely unable to vindicate plaintiff's right." (8a)

No appeal was taken by petitioner from that ruling.

C. Return To The Patent Office Proceedings

Unsuccessful in the District Court for the District of Columbia, petitioner turned again to the Patent and Trademark Office, making the necessary preparations for taking testimony in support of his case. That included filing, under 37 CFR §1.287, a list of documents on which he intended to rely and a list of witnesses whom he contemplated calling during trial (27a). Included in that list was Mr. Karraker, but he was *never called* to testify by petitioner*. Indeed, no evidence was taken by petitioner in support of his case during the Patent Office proceeding.

In accordance with the usual practice, the Patent and Trademark Office issued an order to show cause why judgment should not be rendered against petitioner under 37 CFR §1.252 for petitioner had failed, by not taking any evidence, to carry his burden of proving prior invention.

Instead, on May 9, 1975, petitioner filed in the Patent and Trademark Office a "Report To The Commissioner

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* Karraker is the central figure in petitioner's charge of inequitable conduct, but was, unaccountably, never deposed by petitioner.

Of Patents" in which he indirectly accused CPC and its lawyers of fraud (19a-20a) in not including Mr. Karraker as an inventor of the subject matter of the Molotsky application.

That "report" was followed by two petitions to the Commissioner of Patents and Trademarks, only one of which is worthy of mention here. Petitioner sought leave, after the time for taking evidence had long passed, to serve interrogatories on Mr. Karraker, even though he had failed to take Mr. Karraker's deposition during the testimony period.

The Commissioner of Patents and Trademarks, acting through his delegate, considered petitioner's allegations of improper conduct, including improper joinder of inventors, and ruled (23a-25a) that petitioner's claim was without merit. The Commissioner, in short, ruled that there was no evidence of improper conduct in the Molotsky application or the interference proceeding.*

D. Another Interlude In The Federal Courts

Upon the denial of his petition before the Patent and Trademark Office, petitioner again resorted to the federal courts. Petitioner filed, in the United States District Court for the District of Massachusetts, an action "in the nature of a petition for mandamus" (9a-13a), asking that Court to review the interference proceeding. Jurisdiction of that action was based solely on Title 28, United States Code §1361.

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* The Commissioner considered petitioner's "report" in light of 37 CFR §1.56 authorizing a patent application in which "any fraud is practiced or attempted on the Patent Office" to be stricken from the files of the Patent Office.

The District Court, on motion of each of respondent CPC and respondent Commissioner of Patents and Trademarks, dismissed petitioner's complaint, holding that it had no jurisdiction over the subject matter of the action on the authority of *Phillips Petroleum Co.* v. *Brenner,* 383 F.2d 514 (D.C. Cir., 1967), *cert. denied* 389 U.S. 1042 (1968).

On appeal, the United States Court of Appeals for the First Circuit agreed, in a Memorandum Opinion and Order, entered on February 20, 1976. The Court of Appeals clearly saw through petitioner's claim of jurisdiction based upon Title 28, United States Code §1361, noting that he was plainly seeking review of an interlocutory decision of the Patent and Trademark Office. For that, the Court held, there can be no Federal jurisdiction, absent a final decision on the question of priority of invention. *Phillips Petroleum Co.* v. *Brenner, supra.*

E. Another Return To The Patent Office Proceeding

In December, 1975, the Patent and Trademark Office set the interference proceeding, at petitioner's behest, and this case is scheduled to be heard by the Board of Patent Interferences on June 10, 1976 for a review of petitioner's motions to dissolve and to shift the burden of proof, noted above (28a).

If petitioner is successful on any one of those three motions, he will prevail in the Patent and Trademark Office proceeding.

And that is the posture of the case as of the time the motion and petition were filed with this Court.

Argument

Petitioner's claim for relief before this Court is literally built on the premise that the courts below have failed to follow this Court's decision in *Precision Instrument Manufacturing Co.* v. *Automotive Maintenance Machinery Co.,* 324 U.S. 806 (1945).

That is simply not so. The real reason petitioner has been denied relief by the courts below is because he has not yet, even as of the date his petition before this Court was filed, exhausted his administrative remedies. Neither of the District Courts below had jurisdiction of petitioner's claim, even assuming it has factual substance — a hypothesis far from the actual fact. Petitioner must thus be denied relief in this Court for the very same reason, as will now be shown.

I. Petitioner Has Not Shown That An Extraordinary Writ Should Be Issued, And Cannot Do So For He Has Been Deprived Of Nothing

As petitioner comes before this Court, he has still failed to exhaust his administrative remedies in the Patent and Trademark Office. The Patent and Trademark Office has yet to enter a *final* order adverse to petitioner. The case will shortly be reached for final hearing, and petitioner may prevail in the Patent and Trademark Office, rendering this entire matter moot.

That being so, it can hardly be said that petitioner has satisfied his burden in demonstrating that an extraordinary writ should be granted. As this Court said, in *Will* v. *U. S.,* 389 U.S. 90 (1967),:

> ". . . it is clear that only exceptional circumstances amounting to judicial 'usurpation of power' will justify the invocation of this extraordinary remedy. *De Beers Consol. Mines, Ltd.* v. *United States,* 325 U.S. 212, 217 (1945)." (389 U.S. at 95)

Speaking on the same point, this Court, in *Bankers Life And Casualty Co.* v. *Holland,* 346 U.S. 379 (1953) set the standards for petitioner's burden, namely that petitioner must show his

> ". . . right to issuance of the writ is 'clear and indisputable.' *United States* v. *Duell,* 172 U.S. 576, 582 (1899)." (346 U.S. 379, 384)

Indeed, the record here not only fails to show that petitioner's right to the issuance of a writ is "clear and indisputable", it plainly shows that the writ should not issue at all.

II. The District Court Below Had No Jurisdiction

The Court of Appeals for the First Circuit correctly recognized that petitioner's claim was, in reality, a quest for interlocutory judicial review of a Patent Office interference proceeding.

That there is no jurisdiction for such interlocutory review is so clear as to be beyond dispute. Congress has provided means for a party dissatisfied with a decision by the Patent and Trademark Office on the question of priority of invention to seek judicial review. On the one hand, he may appeal to the United States Court of Customs and Patent Appeals pursuant to Title 35, United States Code, §141, or, on the other hand, he may proceed to a United States District Court under Title 35, United States Code §146. Either remedy, however, is limited

to an appeal from a *final* decision by the Patent and Trademark Office on the question of priority of invention.

This Court so held in *Sanford* v. *Kepner,* 344 U.S. 13 (1952). There, this Court had occasion to construe the predecessor statute to §146, Revised Statute §4915. On that point, this Court wrote:

> "The obvious purpose of the quoted part of R.S. § 4915 is to give a judicial remedy to an applicant who has been *finally denied* a patent because of a Patent Office decision against him and in favor of his adversary on the question of priority." (344 U.S. at 15; emphasis supplied)

That rule of law has been uniformly followed by the courts of appeals throughout the country. See, for example, *Phillips Petroleum Co.* v. *Brenner,* 383 F.2d 514 (D.C. Cir., 1967), *cert. denied* 389 U.S. 1042 (1968); *Klein* v. *Commissioner of Patents,* 474 F.2d 821 (4 Cir., 1973).

The Court of Appeals for the District of Columbia Circuit, in *Phillips Petroleum Co.* v. *Brenner, supra,* noted that in an "exceptional" case, where what seems to be an interlocutory order but is, in reality, the final determination, there may exist jurisdiction if a district court is "clearly convinced that review of final action would be completely unable to vindicate the statutory or substantive right" (383 F.2d 514, 518). This case cannot fall within the exception carved out in *Phillips Petroleum Co.* v. *Brenner, supra,* for petitioner here can still prevail in the Patent and Trademark Office.

In short, petitioner's claim is controlled by *Phillips Petroleum Co.* v. *Brenner, supra,* where that court noted:

> "The prematurity of the present action plainly appears from consideration of the successive possibilities that may lie ahead; appellant may prevail in the Patent Office on the motion to dissolve." (383 F.2d 514, 518)

That alone makes the issuance of a peremptory writ out of a petitioner's grasp here for:

> ". . . it is established that the extraordinary writs cannot be used as substitutes for appeals, *Ex parte Fahey,* 332 U.S. 258, 259-260 (1947), even though hardship may result from delay and perhaps unnecessary trial . . . and whatever may be done without the writ may not be done with it. *Ex parte Roland,* 104 U.S. 604, 617 (1882)." (*Bankers Life And Casualty Co.* v. *Holland,* 346 U.S. 379, 383)

How much more forceful is that admonition here where petitioner may win in the Patent and Trademark Office. Even if the decision there is unfavorable to him, petitioner still has the remedy of appeal under §145 or §146 of the Patent Act. In either case, petitioner asserts no claim of hardship.

III. Precision Instrument Manufacturing Co. v. Automotive Maintenance Machinery Co. Cannot Confer Jurisdiction Here, Absent Statutory Basis Therefor

In the Court below, petitioner contended that the record before the District Court presented a "prima facie" case showing that Mr. Karraker, and not Dr. Molotsky, is the inventor of the subject matter disclosed and claimed in the CPC application. Thus, petitioner argues, there being a prima facie case of inequitable conduct, *Precision Instrument Manufacturing Co.* v. *Automotive Maintenance Machinery Co.,* 324 U.S. 806 (1945) created with the Court below some sort of equitable jurisdiction.

That argument is wrong for two reasons. Firstly, it ignores the fact that the Patent and Trademark Office has already considered the matter, finding no irregularities in the inventorship of the CPC application. (It will be recalled that petitioner, after serving notice of his intention to depose the central figure on the inventorship "issue", passed on his opportunity to be heard by the Commissioner on that question, which petitioner himself had raised. In addition to that, petitioner does not even urge before this Court that the Commissioner's earliest ruling on the inventorship "issue" was incorrect.)

Secondly, the argument for jurisdiction falls when it is remembered that United States courts are tribunals of limited power, free to consider only cases within their jurisdiction as defined by the Congress. In *Briggs* v. *United Shoe Machinery Co.,* 239 U.S. 48 (1915), this Court laid to rest an argument just like that advanced by petitioner here. The exact words of the Court on that point were:

> ". . . counsel for the plaintiff in his brief not only frankly concedes that he finds no statute in point, but endeavors to maintain the jurisdiction of the District Court by a reference to the general powers of Federal courts when sitting as courts of equity, *evidently forgetting that such powers can be asserted only in cases otherwise within the jurisdiction of those courts as defined by Congress.*" (239 U.S. 49, 50; emphasis supplied)

Equally is that so here.

Conclusion

The motion and petition must be denied for it has neither factual nor legal merit.

Respectfully submitted,

KEITH V. ROCKEY
McDOUGALL, HERSH & SCOTT
135 South LaSalle Street
Chicago, Illinois 60603

Attorney for Respondent
CPC International Inc.

Of Counsel:

GEORGE L. GREENFIELD
Wolf, Greenfield & Sacks
185 Devonshire Street
Boston, Massachusetts 02110

ALBERT P. HALLUIN
International Plaza
Englewood Cliffs, New Jersey 07632

APPENDIX

PETITIONER'S COMPLAINT IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

C. A. No. 75-0292

In The United States District Court

For The District Of District Of Columbia

Civil Action
No. 75-0292
WADDY, J.

LESLIE C. CASE,

Plaintiff,

v.

THE COMMISSIONER OF PATENTS,
HYMAN M. MOLOTSKY, and
CPC INTERNATIONAL, INC.,

Co-Defendants.

COMPLAINT

This is an action bringing to judicial review a proceeding in the United States Patent Office, there designated Interference No. 98,302, Leslie C. Case v. Hyman M. Molotsky, alleging in complaint against co-defendants as follows:

1. The plaintiff is the patentee and owner of United States Patent Number 3,510,471, which is subject to the said alleged interference.

2. The co-defendant Commissioner of Patents, whose Post Office address is Washington, D. C., 20231, has legal authority for the direction of the United States Patent Office, under whose auspices the alleged interference has been declared.

3. The co-defendant Hyman M. Molotsky is the Applicant of United States Patent Application Serial Number 105,684, filed January 11, 1971, which is subject to the alleged interference. The co-defendant Molotsky is or was employed by co-defendant CPC International, Inc., at their Moffett Technical Center, Argo, Illinois.

4. The co-defendant CPC International, Inc., is a Delaware corporation, with principal offices at International Plaza, Englewood, New Jersey, and is the owner of the said Application Serial Number 105,684, in interference.

5. The co-defendants are joined as indispensible parties under the several jurisdictions alleged herein.

6. The plaintiff Leslie C. Case has the Post Office address of 14 Lockeland Rd., Winchester, Massachusetts, 01890.

7. This court has jurisdiction of the parties and the subject matter of the action under the following statutes: Mandamus Act, 28 United States Code 1361; Judicial Review Act, 5 United States Code 702 through 706; under the patent laws of the United States, pursuant to the provisions of 35 United States Code 146; all in view of the exceptional and extraordinary nature of the circumstances of this case which require immediate judicial review; and the Declaratory Judgment Statute, 28 United States Code 2201 and 2202.

One primary jurisdiction under which this action is taken is the Mandamus Statute 28 USC 1361. The reasons requiring judicial review under Mandamus are the following:

A. The alleged interference was not declared in accordance with the applicable rules and law, nor is it supported by the facts of the case, nor was it declared upon any stated rational basis.

B. Several actions and rulings made in the proceeding after declaration thereof were made without stated rational basis.

C. There were serious irregularities and informalities involved in the declaration of the alleged interference. In addition orders and rulings by the Patent Office subsequent to the declaration of the alleged interference have added additional errors and/or compounded the irregularities and informalities.

D. This case is exceptional, requiring prompt resolution, insofar as the Patent Office actions have finally deprived and continue to deprive plaintiff Patentee of constitutional, individual, and substantive statutory rights.

E. Insofar as interference proceedings are confidential until resolved, and insofar as the congress is actively contemplating a revision of the patent statute including a revision of that part of the statute dealing with patent interferences, it is therefore clearly of great public interest that all pertinent and relevant information concerning the workings of interference practice be made available to the congress for their consideration during their deliberations.

A second primary jurisdiction under which this action is brought is the Declaratory Judgment Statute, 28 USC 2201 and 2202. The Defendant Applicant explicitly challenged the validity of Plaintiff Patentee's United States Patent Number 3,510,471, without basis in law or fact, administrative remedies have been exhausted, with the Patent Office concurring with the challenge to the validity of the said patent, and there are no avenues remaining during further prosecution of the alleged interference under the rules of the Patent Office whereby the challenge to the validity of the said patent could be remedied.

An alternative jurisdiction under which this action is taken is 35 USC 146. The reasons requiring judicial review under this statute are the following:

A. There are enough facts either already in the record of the alleged interference, or else immediately available by discovery under the Federal Rules of Civil Procedure,

so as to require dissolution of the proceeding on many and various grounds.

B. This case is exceptional, requiring prompt resolution, insofar as the Patent Office actions to date have finally deprived Plaintiff Patentee of constitutional, individual and substantive statutory rights.

Still another alternative jurisdiction under which this action is taken is the Judicial Review Act, 5 USC 702 through 706, under which the court is empowered to hold unlawful and set aside Patent Office actions, findings, and conclusions which in the instant case are:

A) Arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law;

B) Contrary to constitutional right;

D) Without observance of procedure required by law;

E) Unsupported by substantial evidence on the record of this proceeding; and

F) Unwarranted by the facts to the extent that the facts are subject to trial de novo.

Also, under this jurisdiction, this case is exceptional, requiring prompt resolution, insofar as the Patent Office actions have finally deprived and continue to deprive, Plaintiff Patentee of constitutional, individual and substantive statutory rights.

8. Venue properly lies in this judicial district, of co-defendants Molotsky and CPC International, Inc. under 35 USC 146 and 28 USC 2201 and 2202, and of the co-defendant Commissioner of Patents under 28 USC 1361 and 5 USC 702 through 706. And each co-defendant is properly joined as an indispensible party to the actions against the other co-defendants.

9. Grounds on which the Patent Office has committed error, and under which the alleged interference must be dissolved, are the following:

A. There is no interference in fact. The Defendant Applicant at no time was trying to patent the same invention of Plaintiff Patentee's patent.

B. The phantom counts of the alleged interference are unpatentable, and are in fact fully met under 35 USC 102 by a patent cited against Defendant Applicant, and never overcome by him.

C. The phantom counts of the alleged interference are not derived in accordance with the law from the claims of the patent of Plaintiff Patentee. Nor were the rules of the Patent Office followed in the declaration of this alleged interference.

D. The evidence on the record indicates that the Defendant Applicant may not be the sole inventor of the alleged invention of the phantom counts of the alleged interference.

E. The Defendant Applicant cannot support, for many and varied reasons, the phantom counts of the alleged interference, nor the claims of Plaintiff Patentee's patent.

F. The Defendant Applicant is estopped from making the claims of Plaintiff Patentee's patent or the phantom counts of the alleged interference.

G. The Defendant Applicant has abandoned any right to make the claims of Plaintiff Patentee's patent or the phantom counts of the alleged interference.

H. The Defendant Applicant has never reduced to practice the alleged invention of the phantom counts of the alleged interference.

I. The application of Defendant Applicant fails to satisfy the requirements of 35 USC 112.

J. The Defendant Applicant should have been found to be barred by statute from e[illegible]ring into the alleged interference.

K. The Patent Office, in denying Plaintiff Patentee the right to rely on a prior patent for constructive reduc-

tion to practice denied Plaintiff Patentee equal protection of the law.

L. In denying Plaintiff Patentee the right to rely on his prior patent, the Patent Office acted against the public interest, and in fact acted unconstitutionally in not promoting, but rather penalizing, advancement of the useful arts.

M. There have been such irregularities and informalities in the declaration of the alleged interference so as to preclude determination of priority of invention on the merits.

N. There is evidence on the record of this alleged interference which indicates a technical violation of the rules of the Patent Office by counsel for Defendant Applicant.

O. The Defendant Applicant and the Patent Office, without stated rational basis, and contrary to law and the rules of the Patent Office, have challenged the validity of Plaintiff's United States Patent Number 3,510,471.

P. The Defendant Applicant is not entitled to the benefit of the filing date of his Application, Serial Number 606,596, insofar as this prior application does not satisfy the requirements of 35 USC 112, and it neither supports nor reduced to practice the alleged invention of the phantom counts.

Q. The chain of applications which matured into United States Patent Number 3,382,217 demonstrate constructive reduction to practice by Plaintiff of the alleged invention of the phantom counts of the alleged interference prior to the preliminary statement date submitted by Defendant Applicant.

Wherefore, plaintiff prays for judgment:

A. For a preliminary injunction staying further proceedings in the Patent Office, so as to prevent further challenge to the validity of Plaintiff Patentee's patent.

B. For a declaratory judgment finding null, void, improper, and of no legal force, the challenge to the validity of Plaintiff Patentee's United States Patent Number 3,510,471.

C. For an order on the Commissioner of Patents requiring the dissolution of this alleged interference, with prejudice.

D. For a permanent injunction, ordering that no patent interference involving a United States patent be declared having as counts claims other than claims copied exactly from the patent in interference.

E. For damages to be assessed against Defendant Applicant for loss of potential license revenue from Plaintiff Patentee's patent, together with interest and costs.

F. For damages to be assessed against Defendant Applicant for the gratuitous and illegal challenge to validity of Patentee's patent, together with interest and costs.

G. For each of the above damages to be trebled, insofar as the said damages were incurred in an attempt to gain a monopoly by seizure of a valid issued United States patent through legal proceedings having no basis in fact nor sanctioned by law.

H. For an accounting for the expenditures made in the bringing and prosecution of this action, including an accounting in lieu of reasonable attorney's fees.

I. For such other and further relief as justice may require.

/s/ Leslie C. Case
14 Lockeland Road
Winchester, Massachusetts
01890

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF JUDGE WADDY IN THE DISTRICT OF COLUMBIA CIVIL ACTION

* * *

COURT'S FINDING OF FACTS AND CONCLUSIONS OF LAW

The Court: This Court has considered the motions filed herein and has listened patiently to the arguments both in support of the motion to dismiss and in opposition thereto. This Court is satisfied that the law requires, for the jurisdiction of this Court to attach, that there be final action by the Patent Office, or an exceptional case that would remove it from the general law and that there is no final action by the Patent Office in this case is still being processed and is being timely processed in that there is no claim of delay and that it is now at the trial stage and the Court finds that there is no exceptional case here which would remove this case from the general rule because it is not convinced, clearly convinced, that a review of final action would be completely unable to vindicate the plaintiff's right. Accordingly, the motion of the Commissioner and the motion of CPC to dismiss for lack of jurisdiction is granted and the case is dismissed for lack of jurisdiction and this dismissal for lack of jurisdiction will also carry with it, since it's the same case, a dismissal with respect to Defendant Molotsky.

Having granted the motion to dismiss for lack of jurisdiction, the motion of plaintiff for summary judgment is denied as being moot. The motion of the Commissioner of Patents and Defendant Molotsky and CPC International to stay discovery proceedings is likewise denied as being moot.

Will counsel present today, before the close of business today, an order. There have been proposed orders, but they do not quite fit the circumstances present here in accordance with the Court's ruling.

Mr. Rockey: Yes, Your Honor. Thank you, Your Honor.

* * *

PETITIONER'S COMPLAINT IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS WITH ATTACHMENTS

In The United States District Court

For The District Of Massachusetts

Civil Action
No. 75-3614-G

LESLIE C. CASE,

Plaintiff,

v.

THE COMMISSIONER OF PATENTS AND TRADEMARKS,

and

CPC INTERNATIONAL, INCORPORATED,

CoDefendants.

COMPLAINT

This is an action in the nature of a petition for mandamus alleging, in complaint against co-defendants, as follows:

1. The Plaintiff is a private inventor, residing at 14 Lockeland Road, Winchester, Massachusetts, 01890.

2. The Co-Defendant Commissioner of Patents and Trademarks has statutory authority for supervision of the United States Patent Office, with a legal address of Washington, D. C., 20231. The physical address of the office of the Commissioner of Patents and Trademarks is Crystal Plaza, Arlington, Virginia.

3. The Co-Defendant CPC International, Inc. is a corporation of Delaware with principal offices at International Plaza, Englewood Cliffs, New Jersey, 07632, and

further has a regular and established place of business within this judicial district at 346 D Street, South Boston, Massachusetts.

4. This Court has jurisdiction of the parties and the subject matter of this action under the Mandamus and Venue Statute, 28 USC 1361. Venue properly lies within this judicial district, because that statute expressly provides venue for all federal district courts with respect to governmental agencies, and pursuant to the general venue statute, 28 USC 1391(c), because Co-Defendant CPC International does business in this district.

5. The Plaintiff and the Co-Defendants are now involved in an inter-partes proceeding in the United States Patent Office, styled by the Patent Office as Interference No. 98,302, which proceeding was constituted on April 26, 1973.

6. Involved in this proceeding are U. S. Patent No. 3,510,471, of which the Plaintiff is inventor and owner, and U. S. Patent Applications, Serial Nos. 606,596 and 105,684, of which Co-Defendant CPC International is the owner. The subject matter of U. S. Patent No. 3,510,471, and assertedly of the proceeding, is a technically superior replacement for a product made from industrial sugar, which product is currently used in large scale in the preparation of rigid urethane foams used for thermal insulation.

7. During the prosecution of said Patent Application Serial No. 606,596, on March 17, 1969, the Examiner gave Co-Defendant CPC International a rejection on the grounds that the alleged sole inventor, one Hyman M. Molotsky, was not filing his own affidavits as inventor as required under the rules. This rejection was never withdrawn by the Examiner, and a final rejection of all claims was given and maintained by the Examiner. This application was taken to appeal, and subsequently abandoned during the appeal process by Co-Defendant CPC International.

8. Co-Defendant CPC International refiled said application Serial No. 606,596 as application serial No. 105,684 on January 11, 1971, with the said Hyman M. Molotsky again being the alleged sole inventor. The said inter-partes proceeding was constituted by the Patent Office on the basis of the later-filed application without any apparent reference whatever to, or consideration of, the possible difficulty with inventorship of the CPC International applications.

9. In the said inter-partes proceeding, Co-Defendant CPC International filed a preliminary statement, sworn to under oath by the said Hyman M. Molotsky, stating the following:

1) Hyman M. Molotsky is the sole inventor of the alleged invention of his application.

2) The starting date of the experimental work leading to the alleged invention of the application was September 21, 1964.

But, included with the preliminary statement was an exhibit signed by one Ed Karraker together with Hyman M. Molotsky as co-inventors.

A copy of the said preliminary statement is appended hereto as Exhibit A.

10. The Plaintiff filed a motion on August 27, 1973, raising the point, among many others, that there was a question of inventorship of the application of CPC International, in view of the preliminary statement exhibit showing there to be two co-inventors, not a sole inventor.

11. On May 15, 1974, the Interference Examiner responded to this point by stating that

> "Parts D and E of the Case motion to dissolve on the ground of no right to make are dismissed. The issue of inventorship raised in part D is a matter which would require that taking of testimony for its resolution and cannot be considered on the record

itself. Moreover, a motion to dissolve cannot be eradicated on something found in a preliminary statement."

12. On May 9, 1975, the Plaintiff filed a report to the Commissioner of Patents pursuant to the 'Precision Instrument' decision of the United States Supreme Court, (324 US 806), pointing out that not only is the said Preliminary Statement self-contradictory on the subject of inventorship, but also that the sworn statement concerning the starting date of the experimental program is in apparent direct conflict with an affidavit filed by the said Ed Karraker, on December 17, 1970, in the prosecution of application Serial No. 105,684.

Copies of pages 1 and 2 of the said affidavit by Karraker, and of the said "Report to the Commissioner" are appended hereto as Exhibits B and C, respectively.

13. Co-Defendant CPC International had been assigned by the Patent Office a date of May 29, 1975, by which time to file lists and documents on which they would rely in the proceeding. This date was allowed to pass without the filing of any document or other evidence whatever. Thus Co-Defendant CPC International made, and has made to this date, no effort to resolve the discrepancies in the record of Application Serial No. 606,596 and of Application Serial No. 105,684, or to provide any evidence whatever, other than his own sworn statement, that Hyman M. Molotsky is in fact a sole inventor.

14. On May 22, 1975, the Plaintiff filed a Petition to the Commissioner of Patents requesting permission to interrogate the said Ed Karraker on the subject of experimental work performed by Karraker. That petition and proposed interrogatory are hereto appended as Exhibits D and E, respectively.

15. On August 8, 1975, the Patent Office issued a response to the said "Report to the Commissioner" and the said "Petition to the Commissioner". This response

did not address the conflicts and discrepancies in the record of the applications of Co-Defendant CPC International, and did not grant the petition to interrogate Karraker. A copy of that response is appended hereto as Exhibit F.

16. That said response, in not addressing the discrepancies and conflicts in the record of the said patent applications, failed to comply with the mandate of the Supreme Court to rule on the sufficiency of the evidence.

17. The Patent Office, in construing the said "Report to the Commissioner" and "Petition to the Commissioner" as part of the inter-partes proceeding, clearly misinterpreted the mandate of the Supreme Court. Whereas the Patent Office denied the petition for an interrogatory as untimely, the Supreme Court clearly and explicitly provided for a ruling on the sufficiency of the evidence at any stage of an interference proceeding. Further, the 'Precision Instrument' decision clearly calls for consideration of possible inequitable conduct outside of the particular inter-partes proceeding involved.

18. Wherefore, the Plaintiff prays for judgment:

That this Court consider the discrepancies and contradictions in the record of the patent applications of Co-Defendant CPC International, together with the Notebook No. 29 of Ed Karraker, along with whatever additional evidence as may be introduced by CPC International, and that this Court then decide whether or not the Patent Office has properly ruled on the sufficiency of this evidence, and if not, then this court issue an order requiring that Co-Defendant Commissioner of Patents and Trademarks make such a proper ruling.

/s/ Leslie C. Case
Leslie C. Case, Pro Se
14 Lockeland Road
Winchester, Massachusetts, 01890
(617) 729-0384

EXHIBIT A TO PETITIONER'S COMPLAINT IN THE DISTRICT COURT BELOW—THE MOLOTSKY PRELIMINARY STATEMENT IN THE INTERFERENCE PROCEEDING

Exhibit A

IN THE UNITED STATES PATENT OFFICE
BEFORE
THE BOARD OF PATENT INTERFERENCES

Leslie Catron Case)
v.) Interference No. 98,302
Hyman M. Molotsky)

PRELIMINARY STATEMENT OF
HYMAN M. MOLOTSKY

State of Illinois)
) ss.
County of Cook)

Hyman M. Molotsky, being duly sworn, deposes and says that he is the applicant of U.S. application Serial No. 105,684, filed January 11, 1971, which is a continuation-in-part of application Serial No. 606,596, filed January 3, 1967, and which said application Serial No. 105,684 is involved in the above-identified interference, that he made the invention set forth by the counts of the interference in the United States; and that:

(1) No drawing of the invention of the counts was made prior to the filing dates of U. S. applications Serial Nos. 105,684 and 606,596, inasmuch as the invention of the counts is of such a nature that it does not lend itself to illustration;

(2) The first written description of the invention of the counts was made on September 22, 1964. As evidence of this, there is attached hereto Exhibit 1, which consists of copies of pages 7, 8 and 9 of Idea Notebook No. 95, which was signed and dated September 22, 1964.

(3) The invention was first disclosed to others on September 22, 1964.

(4) The date of the first act or acts susceptible to proof other than acts of the character specified in paragraphs (1), (2) and (3) which, if proven, will establish conception of the invention is about September 21, 1964, at which time laboratory work was initiated looking toward an actual reduction to practice. Subsequent dates are within the period between October 1, 1964 and January 3, 1967, and subsequently, on all of which dates the invention of the counts was described, disclosed, and reduced to practice, as will be described by various witnesses in this interference and as are set forth in various notebooks, reports, memoranda, correspondence and other records dated throughout this period.

(5) The invention of the counts was actually reduced to practice on October 1, 1964.

(6) Active exercise of reasonable diligence toward reducing the invention of the counts to practice began on September 22, 1964, and continued from that date until the actual reduction to practice and successively continued through later reductions to practice until January 3, 1967, the filing date of application Serial No. 606,596, the parent application of Serial No. 105,684, which is involved in the above-identified interference.

Further deponent sayeth not.

/s/ Hyman M. Molotsky
Hyman M. Molotsky

Sworn To And Subscribed To before me this 19th day of June, 1973.

/s/ M. J. Lurlong
Notary Public

Seal

EXHIBIT 1

RESEARCH DEPARTMENT
CORN PRODUCTS REFINING CO.

Oxyalkylation of mixtures of starch or cellulose and a number of polyols.

This idea relates to a novel polyether composition prepared by oxyalkylation of a mixture of starch or cellulose and a polyol such as methylglucoside etc.

The object of this invention is to provide a low cost polyol for use in urethane foams, coatings, surfactants etc. The preferred alkylene oxides are propylene oxide and ethylene oxide. The polyols that can be used in this invention include sucrose, sorbitol, pentaerytritol, glycerine, glycols, hydrogenated corn syrups, alkylglycosides, propylenegycol glycosides, glycerine glycosides and similar polyols.

Amines, amino alcohols or other reagents with active hydrogens may be substituted for the polyols in the above invention. The above invention can be illustrated by the following example. Corn products starch code 5082 (162 grams), total methylglucoside (194 grams), propylene oxide (174 grams) and KOH (6.5 grams) were mixed in a two liter autoclave. The temperature was raised to 225°F (pressure 100 psig). As the reaction proceeded the temperature slowly rose to over 300°F. The pressure was maintained at about 100 psig by use of cooling coils. When the pressure dropped to about 20 psig additional propylene oxide was added and the reaction allowed to proceed until a total of 750 grams propylene oxide was reacted. The reaction medium was neutralized with tartaric acid, stripped to remove volatiles and filtered.

The above polyether (426 hydroxyl number) was reacted with PAPI isocyanate to give a rigid urethane foam (density of 1.58 pounds/cubic ft.). This foam was similar

in appearance to a foam prepared from a methyl glucside polyether having a corresponding hydroxyl number.

Disclosed To And Understood By
Eugene T. Paschall

Date September 22, 1964

Inventor H. M. Molotsky
Ed Karraker

Date September 22, 1964

EXHIBIT B TO PETITIONER'S COMPLAINT IN THE DISTRICT COURT BELOW—KARRAKER AFFIDAVIT FILED DURING THE PROSECUTION OF THE CPC PATENT APPLICATION

Exhibit B

In re application of	)	
Hyman M. Molotsky	)	
Starch Polyethers, Starch-Based Polyethers,	)	D-1934A
And Processes For Producing Them	)	
Serial No.	)	
Filed:	)	

Hon. Commissioner of Patents
Washington, D. C. 20231

Sir:

AFFIDAVIT

E. L. Karraker, being duly sworn, deposes and says that:

I am presently employed in the technical service department of the Corn Industrial Unit of CPC International Inc., formerly named Corn Products Company. I have been employed by that company for several years past, and until recently, was employed in the chemical research laboratories. Prior to November 9, 1964, while employed in the chemical research laboratories of CPC International Inc., I worked at the direction of and under the supervision of Dr. Hyman M. Molotsky and carried out cer-

tain work in the laboratory at his direction and under his supervision, as described in greater detail hereafter.

During several months of 1964 prior to November 9, 1964, Dr. Molotsky was working on a project, under the general direction of Dr. Eugene F. Paschall of our chemical research laboratories, to develop starch polyethers, sugar polyethers, and related products, and processes for producing them. Much of my time, during the months of 1964 prior to November 9, 1964, was spent in conducting laboratory experiments to carry out this program.

I am generally familiar with the subject matter of the United States patent application that is captioned above, and with its parent application, Serial No. 606,596, filed January 3, 1967, as to both of which my employer, CPC International Inc., is known to me to be the assignee.

The inventions that are disclosed and claimed in the above-captioned patent application were reduced to practice in this country prior to November 9, 1964, by experiments that I conducted in the laboratory involving the preparation of starch polyethers and starch-based polyethers, and their use in the preparation of polyurethane foams.

I have reviewed the affidavit of Dr. Molotsky that has been prepared for submission on the above-captioned patent application and that I understand will be filed simultaneously with my own affidavit, and that is attached thereto. In reviewing this affidavit, I have examined carefully the copies of selected pages from Research Laboratory Notebook No. 29, which was assigned to me and which I maintained. The notebook records reflect accurately the work that I conducted at that time and are the records that I kept. I have read the conclusions of Dr. Molotsky as stated in his affidavit, based in part upon my laboratory experiments, and I am in agreement with his conclusions. Moreover, I was aware of Dr. Molotsky's conclusions prior to November 9, 1964, and was then in agreement with them.

EXHIBIT C TO PETITIONER'S COMPLAINT IN THE DISTRICT COURT BELOW—PETITIONER'S REPORT TO THE COMMISSIONER, FILED IN THE INTERFERENCE PROCEEDING

Exhibit C

IN THE UNITED STATES PATENT OFFICE

Report To The Commissioner Of Patents Under 'Precision Instrument' Re Interference Number 98,302

Hon. Commissioner of Patents
Washington, D. C.

Sir:

Leslie C. Case calls the attention of the Commissioner of Patents, in the Commissioner's general supervisory authority, to the landmark decision of the Supreme Court in 'The Precision Instrument Mfg. Co. v. The Automotive Maintenance Co.' 324 U. S. 806, which decision has just come to the attention of the undersigned. The opinion reads in part:

> Those who have applications pending with the Patent Office or who are parties to Patent Office proceedings have an uncompromising duty to report to it all facts concerning possible fraud or inequitableness underlying the applications in issue.
>
> Public interest demands that all facts relevant to such matters be submitted formally or informally to the Patent Office, which can then pass upon the sufficiency of the evidence.

Leslie C. Case now performs his uncompromising duty under this decision and reports to the Commissioner of Patents the following evidence in the record of Interference No. 98,302 involving Application Serial No. 105,684:

1) The Preliminary Statement of Applicant Molotsky.

2) The pages 64 and 68 copied from notebook No. 29 of Ed Karraker, introduced by Applicant Molotsky in "Statement under Rules 204(c) and 205b" filed on January 11, 1971.

3) Pages 1 and 2 from an Affidavit of Ed Karraker, signed on December 17, 1970, and submitted in the prosecution of Application Serial No. 105,684.

The following facts are particularly pointed out:

1. The Preliminary Statement filed and sworn to by sole Applicant Molotsky bears in the Exhibit attached thereto two signatures in the space provided for the inventor(s).

2. The experimental data recorded on page 68 of Ed Karraker's Notebook No. 29 clearly correspond to those described in the Preliminary Statement Exhibit.

3. Prior page 64 of Ed Karraker's Notebook No. 29 carries a statement signed by Karraker which records that the described experiment resulted in "the first product that did not appear to be a slurry of starch in MEG polyether".

4. In the Preliminary Statement the date of September 21, 1964, is identified as the the start of laboratory work of the starch polyol project.

5. E. L. Karraker, in his Affidavit signed on December 17, 1970, states "During several months of 1964 prior to November 9, 1964, Dr. Molotsky was working on a project, under the general direction of Dr. Eugene F. Paschall of our chemical research laboratories, to develop starch polyethers . . ." Karraker also states "Much of my time, during the months of 1964 prior to November 9, 1964, was spent in conducting laboratory experiments to carry out this program."

The undersigned respectfully submits that, the facts having now been reported, the "Patent Office can then

pass upon the sufficiency of the evidence" as contemplated in the Supreme Court ruling.

Respectfully submitted,

/s/ Leslie C. Case
Leslie C. Case
14 Lockeland Road
Winchester, Massachusetts 01890

EXHIBIT E TO PETITIONER'S COMPLAINT IN THE DISTRICT COURT BELOW — INTERROGATORIES PROPOSED BY PETITIONER TO KARRAKER

EXHIBIT E

INTERROGATORIES PROPOUNDED TO BE ANSWERED BY ED KARRAKER, ONETIME ASSISTANT TO APPLICANT MOLOTSKY

1. State your full name, residence, positions held at CPC International, Inc., and date of first joining CPC International Inc.

2. Referring to any available records, if necessary, provide the initial date in 1964 on which you were assigned to the starch polyol project, which project was referred to in your affidavit, signed by you on December 17, 1970.

3. Provide clearly legible copies, including all dates thereon, of the pages 64 and 68 of your notebook No. 29.

4. Provide full and legible copies, including all dates thereon, of the four previous experiments referred to on page 64 of your notebook No. 29, which experiments gave heterogeneous products from starch.

5. Provide a full and legible copy, including all dates thereon, of all experimental data which were used as the basis for, or were depended upon, in the description of conception of invention given on Pages 7, 8, and 9 of Notebook No. 95, signed by you as co-inventor, on September 22, 1964.

6. Provide a legible copy, including all dates thereon, of that page of your notebook No. 29, which first describes an experiment conducted under, or in connection with, the said starch polyol project.

EXHIBIT F TO PETITIONER'S COMPLAINT IN THE DISTRICT COURT BELOW — DECISION OF THE COMMISSIONER ON PETITIONER'S "REPORT" AND PETITION FOR RELIEF TO PROPOUND INTERROGATORIES

U. S. DEPARTMENT OF COMMERCE
Patent Office
Address Only: Commissioner Of Patents
Washington, D. C. 20231

Aug 8 1975

Interference No. 98,302	)	
Case	)	On Petition
v.	)	
Molotsky	)	

The above-identified interference is before the Commissioner of Patents & Trademarks for consideration of three papers filed by Case:

(1) a document styled Report To The Commissioner Of Patents Under "Precision Instrument" Re Interference Number 98,302 (Paper No. 65);

(2) a first Petition To The Commissioner Under Rule 181 (Paper No. 68); and

(3) a second Petition To The Commissioner Under Rule 181 (Paper No. 69).

Molotsky has filed an opposition to each paper.

I.

By Paper No. 65, and purportedly acting under Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co., 324 U.S. 806, 65 USPQ 133 (1945), Case brings certain facts he believes are supported by the record to the attention of the Commissioner. According to Case, on the basis of these facts, "the 'Patent Office can then pass upon the sufficiency of the evidence' as contemplated in the Supreme Court ruling."

It is not entirely clear from Paper No. 65 and other papers associated therewith exactly what action Case wishes the Patent & Trademark Office to take. It appears, by reading between the lines, that Case wants the Patent & Trademark Office to strike the involved Molotsky application from the files pursuant to Rule 56 [37 C.F.R. 1.56].

Paper No. 65 and the other papers associated therewith have been considered, but no basis is seen for striking the involved Molotsky application.

II.

By Paper No. 69, Case requests ". . . permission to propound . . . [certain] interrogatories [to one Ed Karraker] under the Federal Rules of Civil Procedure, and to employ the Federal Rules of Civil Procedure, if necessary, to obtain responses thereto." It is difficult to determine from Paper No. 69 and other papers associated therewith whether Case's request is (1) a request for discovery in the interference pursuant to Rule 287 [37 C.F.R. 1.287] or (2) a request for discovery ancillary to the matters mentioned by Case in Paper No. 65. In either event, the request to propound interrogatories is denied.

Assuming the request is one for discovery under Rule 287, it is clearly belated, inasmuch as it was made after "the period for preparation for testimony, or thereafter as authorized under [Rule 245, 37 C.F.R.] 1.245 . . ." and no excuse has been given for the belatedness.

Alternatively, if the request is one for discovery ancillary to the matters discussed in Paper No. 65 and is not a request for discovery in the interference, the Commissioner is without authority under the law to require Ed Karraker to answer interrogatories.

III.

By Paper No. 68, Case requests "waiver of the part of Rule 282(a) [37 C.F.R. 1.282(a)] requiring that copies of the record . . . must be served on the other parties, and submitted to the Patent Office."

It appears from Paper No. 68 that Case wished to introduce in evidence in the interference his prior appli-

cations, Serial No. 168,062, Serial No. 188,842, Serial No. 456,816, and Serial No. 485,932 in order to establish a constructive reduction to practice. Case does not wish to serve copies of these applications on Molotsky, because "the complete files of these applications run to many hundreds of pages, perhaps more than 1000 pages" and the cost of preparing and reproducing the applications is beyond Case's financial capabilities.

The involved Case patent makes no reference to any of the four applications which Case wishes to introduce in evidence. Under the law, therefore, Case cannot claim the benefit of the filing date of any of the four applications. 35 U.S.C. 120. See also Hovlid v. Asari, 134 USPQ 162 (9th Cir. 1962); Sticker v. Blaw-Knox Co., 160 USPQ 177 (7th Cir. 1968); Sampson v. Ampex Corp., 171 USPQ 686 (S.D.N.Y.), aff'd 174 USPQ 417 (2d Cir. 1972); and Clover Club Foods Co. v. Gottschalk, 178 USPQ 505 (C.D.Cal. 1973). It follows that in no way can Case rely on any of the four mentioned applications to establish a constructive reduction to practice. Accordingly, Case has not established, within the meaning of Rule 183 [37 C.F.R. 1.183], that "justice requires" the waiver of any provision of Rule 282(a). The relief requested in Paper No. 68 is therefore denied.

Summary

All relief requested by Case in Papers No. 65, 68, and 69 is *denied*. The interference is returned to the jurisdiction of the Patent Interference Examiner.
Lutrelle E. Parker for

C. Marshall Dann
Commissioner of Patents and Trademarks

Leslie Catron Case
14 Lockeland Road (for Case)
Winchester, Massachusetts 01890

Frank E. Robbins
CPC International Inc. (for Molotsky)
International Plaza
Englewood Cliffs, New Jersey 07632

PETITIONER'S SERVICE OF DOCUMENTS AND LISTS IN THE INTERFERENCE PROCEEDING

IN THE

United States Patent Office

Before The Board of Patent Interferences

Hyman M. Molotsky, Applicant	)	
	)	
v.	)	Interference No. 98,302
	)	
Leelie C. Case, Patentee	)	

DOCUMENTS AND LISTS UNDER RULE 287 (a)

In accordance with the order mailed March 19, 1975, the Patentee hereby serves the attached documents, listed as follows:

Exhibit A "Polyester No. 70, Jan. 19, 1962"

Exhibit B "Polyester No. 88, Feb. 17, 1962"

Exhibit C "Polyester 129, April 13, 1962"

Exhibit D "Polyester 130, April 14, 1962"

Exhibit E "Further foaming of No. 130, April 15, 1962"

Exhibit F "Polyester 132, April 15, 1962"

Exhibit G "Modified Cucrose-PA-propylene oxide Polyester-Polyetter, Nov. 14, 1964"

Exhibit H "Low-cost Starter for Polyether-ester, Dec. 16, 1964"

Exhibit I "Sucrose started Polyester-Ether, Dec. 20, 1964"

Exhibit J "High Functionality Polyester-Ether, Dec. 21, 1964"

Exhibit K "Prep. of polyoxypropylene ether of sucrose-water, Dec. 26, 1964"

Exhibit L "Ideas for lower vis. polyester-ether polyols, Jan. 16, 1965"

Exhibit M "Polyester-ether polyol, Feb. 4, 1965"

Exhibit N "Sept. 26, 1965" (page 18)

Exhibit O "Jan. 24, 1966" (page 69)

Exhibit P "Jan. 24, 1966" (page 70)

Exhibit Q "Jan. 26, 1966" (page 71)

Exhibit R "Test Report", 2 pages, 1/31/66

Patentee does not intend to call any witnesses concerning his own conception and reduction to practice. However, Patentee does intend to take testimony from witnesses concerning the alleged invention, reduction to practice and prosecution of Applicant Molotsky. In case Rule 287 (a)(1)(iii) may be interpreted to require a list of those intended to be interrogated, deposed, or supoened, either in this proceeding, or in the deprived Civil Action 75-0292, the Patentee states that he contemplates testimony from those persons listed below:

Employees at CPC International

Hyman M. Molotsky
Ed Karraker
Ronald Golub
Frank E. Robbins
Albert P. Halluin

Officials of the United States Patent Office

Johnnie R. Brown
Lewis Gotts
I. A. Calvert
F. E. Engelthaler
George W. Boys

Respectfully submitted,
/s/ Leslie Case
Leslie C. Case

April 5, 1975 — 14 Lockeland Road
Winchester, Mass. 01890

Certificate of Service

It is hereby certified that a copy of this service, together with attached exhibits, was mailed by first-class mail to counsel for Applicant, Frank E. Robbins, this 5th day of April, 1975.

/s/ Leslie Case
Leslie C. Case

PATENT OFFICE NOTICE OF FINAL HEARING IN THE INTERFERENCE PROCEEDING

U.S. DEPARTMENT OF COMMERCE
Patent Office

Albert P. Halluin	Interference No. 98,302
CPC International Inc.	Case
International Plaza	v.
Englewood Cliffs, N.J. 07632	Molotsky

(Mailed April 22, 1976 — Board of Patent Interferences)

The final hearing in this case is set for June 10, 1976, at 9:00 a.m., in Room 6-1164, Building 6, Crystal Plaza, 2221 Jefferson Davis Highway, Arlington, Virginia.

Counsel who do not expect to attend are requested to promptly notify this Office and such notice must be served on opposing party. Rule 247.

Attention of the parties is directed to 35 USC 135(c) regarding the filing of settlement agreements in interferences.

/s/ Charles R. Houpe
Clerk, Board of Patent Interferences

CRHoupe/cm
703/557-3550